

**MODEL FORM OF AGENCY CONTRACT**

**International Agency on an exclusive basis**

(Please note, variants are shown by the letters A, B & C!)

CHAPTER I. OBJECT OF THE CONTRACT

Name of Manufacturer ..... whose registered office is at ..... represented by ..... and hereinafter called "the Manufacturer", grants to

Name of Agent ..... whose registered office is at ..... represented by ..... hereinafter called "the Agent"

the exclusive agency for the following products (hereinafter called "the Products"): ..... in the territory defined below (hereinafter called "the Territory"): .....

CHAPTER II. AGENT'S OBLIGATIONS

Article 1. Agent's Functions

The Agent shall solicit customers in the Territory.

- A. He has continuing authority to negotiate the sale of the goods indicated under Chapter I on behalf of the Manufacturer.

He shall transmit to the Manufacturer any offers or orders received by him. He has no authority to make contracts on behalf of, or in any way to bind, the Manufacturer. He shall bring to the notice of the customer the terms and conditions of sale (including delivery periods and payment) prescribed by the Manufacturer. The Manufacturer shall be free to reject any offers or orders transmitted to him by the Agent.

- B. He shall negotiate and conclude contracts of sale in the name, and on behalf of the Manufacturer. The Agent shall observe the terms and conditions of sale (including delivery periods, price and payment) prescribed by the Manufacturer.

Article 2. Minimum Turnover

The Agent shall transmit orders or conclude contracts for not less than ..... during any period of .....

If the Agent fails so to do, the Manufacturer shall be entitled to terminate the contract at the end of the current calendar year by giving three months' notice by registered letter.

Article 3. Advertising and Fairs

- A. The Agent shall be responsible for all advertising necessary to promote the Products in the Territory and shall meet all the cost of such advertising.
- B. The advertising to be done and the apportionment of the costs thereof shall be as agreed between the parties and set out in Chapter VII.

Participation in fairs or exhibitions shall be subject to prior consultation between the parties.

#### Article 4. Responsibility of Agent for solvency of Customers

- A. The Agent shall take all proper steps to satisfy himself of the solvency of customers whose orders he transmits to the Manufacturer and shall assist the Manufacturer in recovering debts due.
- B. The Agent shall act as a delcredere agent towards the Manufacturer.

Unless otherwise agreed, the Agent shall not be entitled to receive payments on the Manufacturer's behalf.

#### Article 5. Complaints by Customers

The Agent shall note and immediately inform the Manufacturer of any observations and complaints made by customers concerning defects in products delivered, and shall act in the Manufacturer's best interests.

#### Article 6. Manufacturer to be kept informed

The Agent shall with due diligence keep the Manufacturer informed on market conditions and the state of competition.

He shall further send every ..... months a report on his activities.

#### Article 7. Undertaking not to compete

In the Territory defined under Chapter I, the Agent shall not compete with the Manufacturer or assist others to compete with him. In particular, the Agent shall not manufacture products identical with, or similar to, the Products, nor shall he acquire an interest in any undertaking which competes with the Manufacturer.

Furthermore, the Agent shall not market any products, whether new or second-hand, which are identical with, or similar to, the Products. Neither shall the Agent market products manufactured by a competitor of the Manufacturer even if these are not similar to the Products.

The Agent shall inform the Manufacturer of any existing agreements which bind the Agent towards any other undertakings, whether as representative, agent or re-seller, and shall thereafter keep the Manufacturer informed of any further such agreements

entered into by the Agent. The exercise of such other activities by the Agent shall in no case prejudice the fulfilment by him of his obligations towards the Manufacturer.

The undertaking not to compete is valid during the term of the contract specified in Article 27 of the present agreement and for two years after its termination.

#### Article 8. Secrecy

The Agent shall not reveal either during the currency of the contract or after its termination the know-how and/or trade secrets of the Manufacturer nor use such information otherwise than for purposes of the contract.

#### Article 9. Sub-agents

- A. The Agent may engage sub-agents to assist him in all or part of the Territory. He shall inform the Manufacturer thereof.
- B. The Agent may not engage sub-agents without the prior consent of the manufacturer.
- C. The Agent shall engage the following sub-agents: .....

The Agent shall be responsible for the activities of his sub-agents as if they had been performed by him.

#### Article 10. Prohibition in respect of other Territories

The Agent shall not solicit or negotiate contracts with customers having their place of business or in default of such place, their place of residence, outside the Territory. The Agent shall notify the Manufacturer of any enquiries made by such customers but such notification shall not entitle the Agent to any commission.

#### Article 11. Assistance against Unfair Competition and Infringement of Industrial Property Rights

The Agent shall monitor the market and if he notices any infringements of the Manufacturer's industrial property rights or any unlawful act against the Manufacturer's interests, the Agent shall immediately inform the Manufacturer thereof. The Agent shall, to the best of his ability, and in accordance with any directions given him by the Manufacturer, assist the Manufacturer to protect himself against such acts.

#### Article 12. Products held in Stock

The Agent shall keep in good condition products and spare parts stored by him in accordance with the provisions set out in Chapter VII - Additional Stipulations. Such products and spare parts are the property of the Manufacturer.

#### Article 13. After-sales Service and Repairs

The Agent shall, at the cost of the Manufacturer, maintain repair shops in accordance with the provisions set out in Chapter VII and shall provide after-sales services. Such service shall extend to all the Products which are situated in the Territory.

### CHAPTER III. MANUFACTURER'S OBLIGATIONS

#### Article 14. Extent of the Agent's Exclusive Rights

The Manufacturer shall not grant to any other person or undertaking the right to represent or sell the Products in the Territory.

The Manufacturer shall be entitled to deal directly, without the intervention of the Agent, with customers having their place of business or, in default of such place, their place of residence in the Territory. The Manufacturer shall notify the Agent of any business done directly with such a customer, and the Agent shall be entitled to commission as provided for in Chapter IV unless the Manufacturer has reserved the exclusive right to deal directly with that customer.

#### Article 15. Agent to be kept informed

The Manufacturer shall provide the Agent with all information and documents necessary for the exercise of the Agent's activities, including conditions of sale, price lists, technical documents, advertising material.

The Manufacturer shall notify the Agent immediately of any change in his prices, his conditions of sale or his terms of payment.

The Manufacturer shall inform the Agent within .....days of his acceptance, refusal and any non-execution of a commercial transaction which the Agent has procured for the Manufacturer.

#### Article 16. Technical Assistance

The Manufacturer shall assist the employees of the Agent to acquire knowledge of the Products.

#### Article 17. Protection of the Agent's Exclusive Rights

The Manufacturer shall impose on his other agents obligations similar to those set out in Article 10.

### CHAPTER IV. AGENT'S COMMISSION

#### Article 18. Amount of Commission

18.1. The Agent's commission shall be ..... per cent on all sales of the Products which are made during the currency of the contract to customers

situated in the Territory and on which a right to commission has not been expressly excluded.

- 18.2. On sales of spare parts or accessories the commission shall be ..... per cent.
- 18.3. The Agent shall not be entitled to the commission referred to in para 1 and 2 of this Article if that commission is payable, pursuant to Article 31 to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the agents involved.

#### Article 19. Commission on orders not accepted and on contracts terminated

- 19.1. No commission is due on offers or orders transmitted by the Agent and not accepted by the Manufacturer.
- 19.2. If a contract concluded by the Agent is terminated, the Agent shall not be entitled to commission thereon unless the termination is due to a cause for which the Manufacturer is responsible.

#### Article 20. Method of calculating Commission

Commission shall be calculated on the basis of the invoiced sales price.

The costs for erection, putting into operation and similar services which are essentially work and labour, shall be deducted to the extent that they are included in the invoiced sales price.

#### Article 21. Acquisition of Right to Commission

Without prejudice to Article 22 hereinafter, the Agent shall acquire a right to a pro rata commission on each payment made by the customer in settlement of his account. If the customer fails to make payment in full, the commission shall be limited to the pro rata amount payable on the sums actually received by the Manufacturer unless such non-payment is due to a cause for which the Manufacturer is responsible.

#### Article 22. Loss of Right to Commission

- 22.1 The right to commission is lost if, and to the extent that:
- it is established that the contract between the third party and the Manufacturer will not be executed, and
  - that fact is due to a reason for which the Manufacturer is not to blame.
- 22.2. Any commission which the Agent has already received shall be refunded if the right to it is lost.

Article 23. Payment of Commission

The Manufacturer shall pay the commission due, not later than the end of the month following the quarter in which the commission has become due. Such payment shall be accompanied by a statement of the commission due setting out the main components used in calculating the commission.

Article 24. Currency in which Commission paid and calculated

Commission is calculated in the currency of the transaction on which the commission is payable and shall be paid in .....

The exchange rate shall be that of the date of payment of the invoice by the customer.

Article 25. Exclusion of other Remuneration

All expenses incurred by the Agent in fulfilling his obligations under the contract are covered by the commission provided for in Article 18.

Article 26. Taxes

- A. Turnover taxes payable in the Agent's country on his commission shall be for his account.
- B. Turnover taxes payable in the Agent's country on his commission shall be for the account of the Manufacturer.

CHAPTER V. CONTRACT PERIOD

Article 27. Term of the Contract

- A. The contract shall enter into force on ..... and expire on .....
- B. The contract shall enter into force on ..... for an undetermined period and may be terminated, subject to prior notice. The period of notice shall be one month for the first year of the contract, two months for the second year commenced, and three months for the third year commenced and subsequent years.

Article 28. Early Termination

Without prejudice to any express provisions for termination contained herein, this contract may be terminated immediately in case of any fundamental breach of the contract. Such termination may also take place where the legal structure or ownership of one of the parties has changed in such a way as seriously to affect the result that the other party could reasonably expect from the contract. This shall also apply in the case of death or permanent incapacity of Mr./Mrs./Miss .....

#### Article 29. Return of Documents

On the expiration of the contract the Agent shall return to the Manufacturer all advertising material and other documents mentioned in Article 15 which have been supplied to him and are in his possession.

#### Article 30. Return of Stocks

On the expiration of the contract the Agent shall return products and spare parts stored in his premises pursuant to Article 12.

#### Article 31. Unfinished Business

- A. Orders transmitted by the Agent before the expiration of the contract and which result in the conclusion of a contract of sale not more than .... weeks/months after such expiration shall entitle the Agent to commission under Article 18.
- B. Contracts concluded by the Agent before the expiration of this contract but which are to be performed after such expiration shall entitle the Agent to commission under Article 18.

#### Article 32. Indemnity / Compensation

- A. The Agent shall be entitled to an indemnity if and to the extent that:
  - he has brought the Manufacturer new customers or has significantly increased the volume of business with existing customers and the Manufacturer continues to derive substantial benefits from the business with such customers, and
  - the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the Agent on the business transacted with such customers.

The amount of the indemnity shall not exceed a figure equivalent to Commission for one year calculated on the Agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

The Agent shall lose his entitlement to the indemnity in circumstances provided for above if within one year following termination of the contract he has not notified the Manufacturer that he intends pursuing his entitlement.

- B. The Agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with the Manufacturer.

Such damage shall be deemed to occur particularly when the termination takes place in circumstances:

- depriving the Agent of the commission which proper performance of the agency contract would have procured him whilst providing the Manufacturer with substantial benefits linked to the Agent's activities
- and/or which have not enabled the Agent to amortise the costs and expenses that he has incurred for the performance of the agency contract on the Manufacturer's advice.
- The Agent shall lose his entitlement to compensation in the instances provided for above, if within one year following termination of the contract he has not notified the Manufacturer that he intends pursuing his entitlement.

C. Except when the contract is terminated by reason of a breach of contract by either party, no compensation shall be payable in consequence of a termination or failure to renew the contract.

#### Article 33. Exclusion of Indemnity or Compensation

The indemnity or compensation referred to in Article 32, shall not be payable:

- (a) where the Manufacturer has terminated the agency contract because of default attributable to the Agent which would justify immediate termination of the agency contract under the applicable national law;
- (b) where the Agent has terminated the agency contract, unless such termination is justified by circumstances attributable to the Manufacturer or on grounds of age, infirmity or illness of the Agent in consequence of which he cannot reasonably be required to continue his activities;
- (c) where, with the agreement of the Manufacturer, the Agent assigns his rights and duties under the agency contract to another person.

### CHAPTER VI. FINAL PROVISIONS

#### Article 34. Applicable Law and Governing version

The contract is governed by the law of the country where the Manufacturer has his registered office.

The version in the ..... language of this contract is the governing version.

#### Article 35. Dispute Settlement

A. The competent court of the place where the Manufacturer has his registered office shall have jurisdiction in any action arising out of this contract. Provided always that if the Manufacturer is the plaintiff, he may bring his action before the competent court of the place where the Agent has his registered office.

- B. Any dispute arising out of or in connection with this Agreement shall be settled without recourse to the courts, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules, the awards being final and binding. The arbitrator or arbitrators shall have power to rule on their own competence and on the validity of the agreement to submit to arbitration.

#### Article 36. Amendments

Amendments to this contract shall not be valid unless made in writing.

#### Article 37. Assignment

Neither party shall assign this contract without the prior agreement of the other party.

#### Article 38. Lien

The Agent has no lien on the property of the Manufacturer.

#### Article 39. Invalid Clauses

In case one or more provisions of this contract are invalid, the validity of the remaining provisions of the contract shall not be affected thereby.

### CHAPTER VII. ADDITIONAL STIPULATIONS

Chapter II, Article 3	- Advertising and Fairs.
Chapter II, Article 12	- Products held in stock.
Chapter II, Article 13	- After-sales Service and Repairs.
Chapter III, Article 14 B	- Customers with whom the Manufacturer reserves the right to deal directly.
Chapter III, Article 16	- Technical assistance.